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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mikkel Jordahl; Mikkel (Mik) Jordahl,
P.C.,

Plaintiffs,

vs.

Mark Brnovich, Arizona Attorney
General; Jim Driscoll, Coconino County
Sheriff; Matt Ryan, Coconino County
Board of Supervisors Chair; Lena
Fowler, Coconino County Board of
Supervisors Vice Chair; Elizabeth
Archuleta Coconino County Board of
Supervisors Member; Art Babbott,
Coconino County Board of Supervisors
Member; Jim Parks, Coconino County
Board of Supervisors Member; Sarah
Benatar, Coconino County Treasurer, all
in their official capacities,

Defendants,

and

State of Arizona,

Intervenor-Defendant.

Case No: 3:17-cv-08263-PCT-DJH

**STATE'S RESPONSE TO PLAINTIFFS'
POST-ARGUMENT NOTICE (DOC. 58)**

1 Defendants Mark Brnovich and the State of Arizona (the “State”) respectfully
2 respond to Plaintiffs’ post-oral-argument “notice” (Doc. 58). The notice concerns a
3 statement at oral argument that the Attorney General could “offer opinions as to what
4 particular Arizona laws mean,” including at the request of “member[s] of the public,”
5 Tr. at 32:13-24, which Plaintiffs argue is a “misstatement of law.” Doc. 58 at 2. Not
6 only are the notice’s arguments incorrect, but even if correct, they did not merit the
7 extraordinary step of post-argument briefing.

8 *First*, to justify their purported basis for filing the notice, Plaintiffs had to add
9 words to counsel’s argument. The above-quoted statement did not refer only to *formal*
10 Attorney General Opinions under A.R.S. § 41-193(A)(7), but rather included any of the
11 myriad forms of legal interpretation that the Attorney General might undertake and make
12 public—which easily renders this not a “misstatement of law.” Indeed, “executive
13 officials necessarily interpret the laws they enforce.” *Perez v. Mortgage Bankers Ass’n*,
14 135 S. Ct. 1199, 1219 (2015) (Thomas, J., concurring in the judgment); Doc. 58-1 at 2-3.
15 And Plaintiffs cite no authority that would prevent the Attorney General from sharing
16 such interpretations with the public—particularly where Plaintiffs acknowledge that the
17 Attorney General may offer such opinions “in statements to the media,” Doc. 58 at 2.¹

18 *Second*, even as to formal opinions, Plaintiffs misread the governing statutory text.
19 Section 41-193(A)(7) only mandates when the Attorney General *must* issue formal
20 opinions, but does not prohibit doing so in other circumstances. Indeed, Plaintiffs’
21 concession that the Attorney General may offer legal opinions in statements to the press
22 necessarily means that A.R.S. § 41-193(A)(7) does not provide an exclusive list of the
23 persons to whom the Attorney General may offer opinions. *See also State ex rel. Corbin*
24 *v. Pickrell*, 136 Ariz. 589, 597 (1983) (Attorney General’s authority extends to what is

25 ¹ Indeed prior to oral argument the State communicated with a student-invited university
26 speaker about the application of the very statute at issue in this case, *see American*
27 *Muslims for Palestine v. Arizona Board of Regents*, No. 18-670 (D. Ariz.) (Doc. 24-1,
28 showing communications). Plaintiffs also do not offer any explanation of how their
position about the Attorney General’s purported unwillingness/lack of authority to issue
opinions can be reconciled with this fact. *See* Doc. 58-1 at 2 (flagging issue to Plaintiffs).

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2018, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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